

OPEN MEETING AGENDA ITEM



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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

2008 JAN 15 P 12:40

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JAN 15 2008

DOCKETED BY

DOCKET NO. RR-02635B-07-0437

IN THE MATTER OF THE APPLICATION
OF THE ARIZONA DEPARTMENT OF
TRANSPORTATION TO UPGRADE AN
EXISTING CROSSING OF THE
BURLINGTON NORTHERN AND SANTA
FE RAILWAY AT 35TH AVENUE AND U.S.
60 IN THE CITY OF PHOENIX, MARICOPA
COUNTY, ARIZONA, AT AAR/DOT NO.
R1531C106.

THIRD PROCEDURAL ORDER

BY THE COMMISSION:

On July 24, 2007, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Burlington Northern and Santa Fe Railway Company ("Railroad") to upgrade an existing crossing at the Railroad's tracks at 35th Avenue and U.S. 60, in Phoenix, Arizona, at AAR/DOT No. R1531C106 ("Application").

On August 1, 2007, by Procedural Order, the proceeding was scheduled for hearing on September 18, 2007, and other procedural dates for filing and public notice were set.

On September 11, 2007, the Hearing Division was notified that ADOT had not published public notice by August 24, 2007, as ordered in the Commission's Procedural Order.

On September 12, 2007, by Procedural Order, the hearing scheduled on September 18, 2007, was continued to October 11, 2007, and new procedural dates for filings and public notice were established.

Prior to the hearing, ADOT filed certification of public notice pursuant to the Commission's September 12, 2007 Procedural Order.

On October 11, 2007, a full public hearing was convened before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Commission's

1 Railroad Safety Section of the Safety Division ("Staff") appeared with counsel. At the conclusion of
2 the hearing, the matter was taken under advisement pending submission of a Recommended Opinion
3 and Order to the Commission.

4 On November 5, 2007, a Recommended Opinion and Order was issued by the presiding
5 Administrative Law Judge for consideration by the Commission. Several substantive amendments
6 were presented by Commissioners Mayes and Pierce and during the Commission's December Open
7 Meeting, the item was pulled from the agenda for further testimony at an additional hearing.

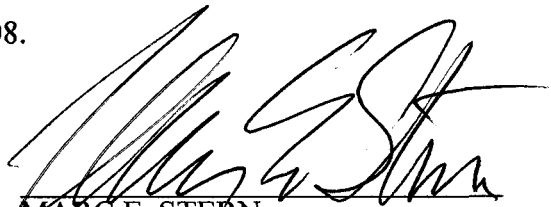
8 After due consideration of the Recommended Opinion and Order and the proposed
9 amendments, it is determined that an additional hearing is necessary on the issues raised in the
10 proposed amendments to the Recommended Opinion and Order, and in order to allow the City of
11 Phoenix and ADOT to present evidence.

12 IT IS THEREFORE ORDERED that the Burlington Northern and Santa Fe Railway and the
13 Commission's Safety Section shall prepare and file a joint recommendation listing possible dates for
14 hearing and shall provide the names and mailing addresses of any other entities whether private or
15 governmental that should be added to the service list to be provided notice of the hearing on this
16 Application when it is scheduled.

17 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway and the
18 Commission's Safety Section shall provide in the joint recommendation the name and address of all
19 road authorities for the crossing which is involved in this proceeding.

20 IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway and the
21 Commission's Safety Section shall pre-file, on a date to be established, testimony concerning the
22 issues raised by the proposed amendments to the Recommended Opinion and Order to further
23 develop the record at a hearing which will be set by further Procedural Order.

24 DATED this 15th day of January, 2008.

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26
27 
28 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered
this 15th day of January, 2008 to:

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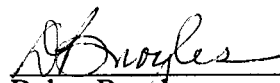
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By:



Debra Broyles
Secretary to Marc Stern